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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,385	02/24/2004	Alan J. Wheatley	21475.NP	2883

20551 7590 08/09/2005

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EXAMINER

HOGAN, JAMES SEAN

ART UNIT PAPER NUMBER

3752

DATE MAILED: 08/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/786,385

Applicant(s)

WHEATLEY ET AL.

Examiner

James S. Hogan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on removal of allowance dated 06 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 11, 13-22, 24-43 and 47-65 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 52-59 is/are allowed.
- 6) ☒ Claim(s) 1-6, 11, 13, 16, 19, 22, 25, 27-30, 32, 35, 37-40, and 60-65 is/are rejected.
- 7) ☒ Claim(s) 7, 8, 14, 15, 17, 18, 20, 21, 24, 26, 31, 33, 34, 36, 41-43 and 47-51 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 June 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 11, 13, 16, 19, 21, 24, 25, 32, 35 and 60-65 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,861,128 to Vick et al.

Regarding claims 1, 13, 21, 24, 64 and 65 Vick discloses an air freshener device (10) having a coherent elastomer body (11) and a scent material interspersed within the body (12), with the elastomer body is a polyurethane foam (Col. 3, line 9). As per claim 2, the polymer body, as shown in Fig. 1, has a self-supporting three-dimensional shape. As per claim 11, polyurethane foam is, by definition, a thermoplastic elastomer. As per claim 13 and 25, the scent material interspersed within the polymer body is scented oil (Col. 3, line 14, with the word "solvent" defining the "oil"). As per claim 16 and 32, the polyurethane foam of Vick et al. ('128) features a plurality of indentations, as holes are formed in the foam substrate during final polymerization. As per claim 19, 35 and part of claim 60, the air freshener of Vick et al. ('128) features a hanger (40) that suspends the body in an existing air filter (34).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-6, 27-30, and 37-41 rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,861,128 to Vick et al.

The rejection of claims 1 and 21 serve as the basis of rejection for claims 3-6 and 27-30, respectively. However, the following will address claims 37-41 first, and can be considered as an associative rejection of claims 3-6 and claims 27-30, as they address the same information.

Regarding claim 37, Vick et al. ('128) teaches an air freshener (10) device having a carrier material that is flexible and compressible under an applied force, and resilient and substantially returnable to an original configuration upon removal of the applied force; and a scent material interspersed within the carrier material, capable of diffusing out of the polymer carrier material to surrounding air, the carrier material being a polyurethane foam. Vick et al. ('128) does not teach a pad with a tacky attachment surface configured and cling to a support surface, however, one of ordinary skill in the art would have the ability to use a common double-sided sticky tape to secure the air freshening device to an existing air filter as shown in Fig. 6. Double-sided sticky tape is well known in the art and would comprise the claimed tacky attachment surface (the glue) as well as the pad and barrier (the foam surface that the glue of the tape is applied

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to). As per claims 4, 30 and 41, sticky tape as a "pad" is flexible and can be deformed to a shape of a support surface. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided a pad with tacky attachment surface, comprising a barrier, in the form of double-sided sticky tape to the air freshener device of Vick et al. ('128) in order to provide additional mounting strength to the attachment of the air freshener to an existing air filter.

Allowable Subject Matter

Claims 52-59 are allowed.

Claims 7, 8, 14, 15, 17, 18, 20, 21, 24, 26, 31, 33, 34, 36, 41-43 and 47-51 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James S. Hogan whose telephone number is (571) 272-4902. The examiner can normally be reached on Mon-Fri, 7:00a-4:00p EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Scherbel can be reached on (571) 272-4919. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JSH
08/08/2005



David A. Scherbel
Supervisory Patent Examiner
Group 3700